

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Kennedy Bui
Vrania Coelho**

**FILE NOs.: OCI- FW-17-160
and 15-0156**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 16 December 2016, the DEM issued a permit to Respondents to alter freshwater wetlands on their property. On 11 April 2017, the DEM inspected the property and spoke with Kennedy Bui (“Bui”) at the time of the inspection. The DEM agent informed Bui that the work undertaken was in substantial noncompliance with the permit and directed Bui to install erosion and sediment (“E&S”) controls. On 11 April 2017, the DEM agent received electronic correspondence from Respondents’ consultant. The consultant stated that he discussed with Vrania Coelho (“Coelho”) what actions were needed to address the noncompliance. On 12 April 2017, the DEM agent sent electronic correspondence to the consultant advising him to continue with his efforts to address the noncompliance. On 18 May 2017, the DEM received electronic correspondence from Coelho requesting an additional 2 weeks to address the noncompliance. As of the date of the NOV, the DEM has not received any further communication from Respondents or their consultant and to the DEM’s knowledge Respondents have failed to address the noncompliance.

C. Facts

- (1) The property is located approximately 270 feet west of Bearskin Farm Road, approximately 830 feet north of the intersection of Bearskin Farm Road and Mattity Road, Assessor’s Plat 10, Lot 98A (“Lot 98”) and Assessor’s Plat 10, Lot 156 (“Lot 156”) in the Town of North Smithfield, Rhode Island.
- (2) Respondents own Lot 98.
- (3) Glen J. Hebert and Joanne E. Hebert own Lot 156.

- (4) On 16 December 2016, the DEM issued to Respondents a permit to alter freshwater wetlands on Lot 98 (number 15-0156) consisting of an approved plan (the “Approved Plan”) and letter of Terms and Conditions (the “Permit”).
- (5) The Permit requires Respondents to:
 - (a) Comply with the Approved Plan; and
 - (b) By 30 April 2017, submit a written progress report (the “Report”) prepared by a consultant regarding compliance with the required restoration of freshwater wetlands as shown on the Approved Plan.
- (6) On 11 April 2017 and 20 April 2017, the DEM inspected the Property. The inspections revealed the following:
 - (a) Cutting, clearing, creating soil disturbance and filling (in the form of soil material and concrete culverts) within Forested Wetland (the “Forested Wetland”) on Lot 98. These activities altered approximately 6,800 square feet of freshwater wetlands beyond the limit of disturbance (“LOD”) on the Approved Plan;
 - (b) Elimination of a Stream on Lot 98 (the “Stream”). This activity altered approximately 105 linear feet of freshwater wetland beyond the LOD on the Approved Plan;
 - (c) Cutting, clearing and creating soil disturbance within two Riverbank Wetlands (the “Riverbank Wetlands”) on Lot 98. These activities altered approximately 3,056 square feet of freshwater wetland beyond the LOD on the Approved Plan; and
 - (d) Filling (in the form of sediment) within Swamp on Lot 156. This activity altered approximately 1,500 square feet of freshwater wetland.
- (7) The activities described in Section C (6) above do not comply with the Approved Plan.
- (8) As of the date of the NOV, Respondents have failed to submit the Report to the DEM.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) ***DEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 10.08*** – requiring an applicant to comply with all conditions of a permit issued by the DEM.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands in noncompliance with the Permit.
- (2) **Within 30 days of receipt of the NOV**, submit the Report to the DEM.
- (3) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration install a continuous uninterrupted line of biodegradable fiber logs between all existing disturbed surfaces/areas to be restored and the adjacent undisturbed freshwater wetlands. The E&S controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration activities, and until such time that all the surrounding areas are properly stabilized. At the discretion and direction of the DEM, additional E&S controls must be installed, as deemed necessary, to protect all freshwater wetlands.
- (b) Restore the Stream to its prealtered condition.
- (c) Return all unauthorized disturbed soils within the Forested Wetland and the Riverbank Wetlands to original grade.
- (d) Plant trees and shrubs in the unauthorized cleared Forested Wetland as follows:
 - (i) Balled and burlapped or transplanted Red Maple (*Acer rubrum*) in an interspersed fashion, 10 feet on center, 6 feet tall after planting, throughout the wetland.
 - (ii) Balled and burlapped or transplanted Highbush Blueberry (*Vaccinium corymbosum*) and Winterberry (*Ilex verticillata*) in an interspersed fashion and equal distribution, 6 feet on center, 4 feet tall after planting throughout the wetland.

- (e) Plant trees and shrubs in the unauthorized cleared Riverbank Wetlands as follows:
 - (i) Balled and burlapped or transplanted White Oak (*Quercus alba*) and Northern Red Oak (*Quercus rubra*) in an interspersed fashion and equal distribution, 10 feet on center, 6 feet tall after planting, throughout the wetlands.
 - (ii) Balled and burlapped or transplanted Highbush Blueberry (*Vaccinium corymbosum*) and Winterberry (*Ilex verticillata*) in an interspersed fashion and equal distribution, 6 feet on center, 4 feet tall after planting throughout the wetlands.
- (f) At the direction of the DEM remove by hand all sediment deposited within freshwater wetlands on Lot 156.
- (g) If any plantings fail to survive at least 1 full year from the time the plantings have been verified by the DEM, the same plant species shall be replanted and maintained until such time that survival occurs over 1 full year.
- (h) All disturbed surfaces within the Riverbank Wetlands must be seeded by planting all disturbed areas with a wildlife conservation grass seed mixture and stabilized with a mat of loose straw mulch. All disturbed surfaces within the Forested Wetland must be seeded by planting all disturbed areas with a **wetland** wildlife conservation grass seed mixture and stabilized with a mat of loose straw mulch.
- (i) All restored wetland areas, including replanted areas, shall be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands, without first obtaining a permit from the DEM.
- (j) Upon stabilization of all disturbed areas, E&S controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any freshwater wetlands.
- (k) The above restoration work shall be completed prior to **15 May 2018**.
- (l) Contact the DEM prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a DEM agent.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$16,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Christina A. Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to Town of North Smithfield, Rhode Island to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7400.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Vrania Coelho
30 Old River Road
Lincoln, RI 02865

Kennedy Bui
30 Old River Road
Lincoln, RI 02865

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File Nos.: OCI-FW-17-160 and 15-0156

Respondents: Kennedy Bui and Vrania Coelho

GRAVITY OF VIOLATION

SEE ATTACHED "PENALTY MATRIX WORKSHEETS."

VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) Failure to Comply With Permit – Fact C (6)(a)	Type I (\$10,000 Max. Penalty) *	Major	\$7,500	1 violation	\$7,500
D (1) Failure to Comply With Permit – Fact C (6)(b)	Type I (\$10,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1) Failure to Comply With Permit – Fact C (6)(c)	Type I (\$10,000 Max. Penalty) *	Moderate	\$2,500	1 violation	\$2,500
D (1) Failure to Comply With Permit – Fact C (6)(d)	Type I (\$10,000 Max. Penalty) *	Minor	\$1,000	1 violation	\$1,000
<i>SUB-TOTAL</i>					\$16,000

*Maximum Penalties represent the maximum penalty amounts per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$16,000

PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – Fact C (6)(a)
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents cut, cleared, created soil disturbance and filled (in the form of soil material and concrete culverts) within the Forested Wetland in noncompliance with the Permit. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.
- (B) **Environmental conditions:** The Forested Wetland was undisturbed prior to the unauthorized alteration.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 8 months. The DEM first documented the violation on 11 April 2017.
- (F) **Areal extent of the violation:** Approximately 6,800 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance by complying with the Permit. On 11 April 2017, the DEM inspected the property and spoke with Bui at the time of the inspection. The DEM agent informed Bui that the work undertaken was in significant noncompliance with the permit and directed Bui to install E&S controls. On 11 April 2017, the DEM agent received electronic correspondence from Respondents' consultant. The consultant stated that he discussed with Coelho what actions were needed to address the noncompliance. On 12 April 2017, the DEM agent sent electronic correspondence to the consultant advising him to continue with his efforts to address the noncompliance. As of the date of the NOV, the DEM has not received any further communication from Respondents or their consultant and to the DEM's knowledge Respondents have failed to address the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project and had an obligation to comply with the Permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$7,500	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – Fact C (6)(b)
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents eliminated a portion of the Stream in noncompliance with the Permit. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** The Stream was undisturbed prior to the unauthorized alteration.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 8 months. The DEM first documented the violation on 11 April 2017.
- (F) **Areal extent of the violation:** Approximately 105 linear feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance by complying with the Permit. On 11 April 2017, the DEM inspected the property and spoke with Bui at the time of the inspection. The DEM agent informed Bui that the work undertaken was in significant noncompliance with the permit and directed Bui to install E&S controls. On 11 April 2017, the DEM agent received electronic correspondence from Respondents' consultant. The consultant stated that he discussed with Coelho what actions were needed to address the noncompliance. On 12 April 2017, the DEM agent sent electronic correspondence to the consultant advising him to continue with his efforts to address the noncompliance. As of the date of the NOV, the DEM has not received any further communication from Respondents or their consultant and to the DEM's knowledge Respondents have failed to address the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project and had an obligation to comply with the Permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$5,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – Fact C (6)(c)
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents cut, cleared and created soil disturbance within the Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** The portion of the Riverbank Wetland that was altered was undisturbed prior to the unauthorized alteration.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 8 months. The DEM first documented the violation on 11 April 2017.
- (F) **Areal extent of the violation:** Approximately 3,056 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance by complying with the Permit. On 11 April 2017, the DEM inspected the property and spoke with Bui at the time of the inspection. The DEM agent informed Bui that the work undertaken was in significant noncompliance with the permit and directed Bui to install E&S controls. On 11 April 2017, the DEM agent received electronic correspondence from Respondents' consultant. The consultant stated that he discussed with Coelho what actions were needed to address the noncompliance. On 12 April 2017, the DEM agent sent electronic correspondence to the consultant advising him to continue with his efforts to address the noncompliance. As of the date of the NOV, the DEM has not received any further communication from Respondents or their consultant and to the DEM's knowledge Respondents have failed to address the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project and had an obligation to comply with the Permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – Fact C (6)(d)
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents filled (in the form of sediment) within the Swamp. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** The Swamp was undisturbed prior to the unauthorized alteration.
- (C) **Amount of the pollutant:** The activities on Lot 98 caused approximately 3 inches of sediment to be deposited in the Swamp on Lot 156. The DEM determined that the sediment would not cause long term adverse impacts to the Swamp and that no restoration was required.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 8 months. The DEM first documented the violation on 11 April 2017.
- (F) **Areal extent of the violation:** Approximately 1,500 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance by complying with the Permit.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project and had an obligation to comply with the Permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,000	\$500 to \$1,000	\$100 to \$500